

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

VICTOR GORDON,

Defendant.

* * * * *

Case No. 11-CR-517 (KAM)

Brooklyn, New York

September 18, 2012

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

DARREN LaVERNE, ESQ.
Asst. United States Attorney
United States Attorney's Office
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Brooklyn, NY 11201

For the Defendant:

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1 (Proceedings commenced at 4:08 p.m.)

2 THE CLERK: Criminal cause for a pleading, the
3 United States versus Victor Gordon, case number 11-CR-517.
4 Please state your appearances for the record.

5 MR. LaVERNE: Good afternoon, Your Honor. Darren
6 LaVerne for the United States.

7 THE COURT: Good afternoon.

8 MR. ALVA: Good afternoon, Your Honor. Daniel Paul
9 Alva for the defendant.

10 THE COURT: Good afternoon.

11 THE DEFENDANT: Good afternoon.

12 THE COURT: Good afternoon, sir.

13 THE DEFENDANT: Good afternoon, Your Honor. I'm
14 Victor Gordon.

15 THE COURT: All right. Would you like to swear Mr.
16 Gordon?

17 (The defendant is sworn.)

18 THE COURT: All right. What is Mr. Gordon going to
19 do today?

20 MR. ALVA: May it please the Court, the government
21 and the defense have entered into negotiations and a plea
22 agreement which will shortly be made part of the record, and
23 it's his intention to plead guilty to the counts in the
24 superceding indictment. Superceding information, I should
25 say.

1 THE COURT: Okay. So is he going to waive
2 indictment on those charges?

3 MR. ALVA: Yes, he is.

4 THE COURT: And plead through an information?

5 MR. ALVA: That's correct, and he has executed the
6 waiver of that --

7 THE COURT: Okay.

8 MR. ALVA: -- that indictment.

9 THE COURT: All right. So Mr. Gordon, you're under
10 oath. I'm going to ask you a lot of questions.

11 If there's anything that you don't understand, just
12 ask me and I'll be glad to explain it, or feel free to
13 consult privately with your lawyer. We'll turn the record
14 off. Your statements have to be honest and complete.

15 If you make any false statements, you could
16 prosecuted for perjury.

17 Do you understand?

18 THE DEFENDANT: I do, Your Honor.

19 THE COURT: All right. Now, can we make sure that
20 his voice is being picked up on the microphones? You
21 shouldn't have to bend down, but as long as you speak up, it
22 should work out just fine. All right.

23 So let's start with the order of referral. This is
24 an order of referral in which you have consented to have me,
25 a Magistrate Judge, hear your guilty plea and make a

1 recommendation to Judge Matsumoto, who is the District Judge
2 who will decide whether to accept the plea and if so, will
3 sentence you.

4 Do you understand?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: And is this your signature on the order
7 of referral? Do you --

8 THE DEFENDANT: It is.

9 THE COURT: Yes. And before you signed it, did you
10 discuss it fully with your lawyer?

11 THE DEFENDANT: I did, Your Honor.

12 THE COURT: Do you have any questions about what
13 you're doing?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: And do you understand you don't have to
16 have me hear your plea? Judge Matsumoto would be more than
17 happy to hear it if you prefer.

18 THE DEFENDANT: I understand, Your Honor.

19 THE COURT: Right. And are you agreeing to have me
20 hear the plea voluntarily?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay. So would the government please
23 explain what the information is before we do the waiver?

24 MR. LaVERNE: Sure, Your Honor. The superceding
25 information charges a sole -- a single count.

1 And it charges smuggling of elephant ivory. In
2 particular, it charges that in or about and between March
3 2009 and April 2009, and those dates are approximate and
4 inclusive, within the Eastern District of New York and
5 elsewhere, the defendant together with others did knowingly,
6 intentionally and fraudulently import and bring into the
7 United States merchandise, to wit, elephant ivory, contrary
8 to law.

9 Here, the African Elephant Conservation Act, Title
10 16, United States Code Sections 4223 and received, concealed,
11 buy and sell and facilitate the transportation, concealment
12 and sale of such merchandise after implication knowing the
13 same to have been imported and brought into the United States
14 contrary to law. That's what's charged in the indictment.

15 THE COURT: All right. And --

16 MR. LaVERNE: It follows a series of forfeiture
17 allegations regarding pieces of ivory that have been seized
18 by the government and the government alleges are forfeitable.

19 THE COURT: And would the count of smuggling of
20 elephant ivory be a felony?

21 MR. LaVERNE: Yes. That's right, Your Honor.

22 THE COURT: And do you happen to know what level
23 felony that is?

24 MR. LaVERNE: I don't know what grade felony it is.
25 I do know that the maximum term of imprisonment is 20 years.

1 THE COURT: Okay.

2 MR. LaVERNE: So I haven't looked at the -- maybe
3 it's a grade C? I just haven't looked at the statute in a
4 while.

5 MR. ALVA: I'm in the same boat.

6 THE COURT: Okay. All right. Mr. Gordon, have you
7 had a chance to read the superceding information?

8 THE DEFENDANT: I have, Your Honor.

9 THE COURT: And have you heard the government's
10 explanation of the charge?

11 THE DEFENDANT: I have, Your Honor.

12 THE COURT: Do you understand the charge?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: Do you understand that you have a right
15 to have the charge against you presented to a grand jury to
16 determine whether there's probable cause?

17 THE DEFENDANT: I do, Your Honor.

18 THE COURT: And to you understand that if you waive
19 indictment, you are giving up your right to have a grand jury
20 determine whether or not there is probable cause to bring
21 this charge against you?

22 THE DEFENDANT: I do, Your Honor.

23 THE COURT: And do you understand that this is a
24 serious charge? It's a felony and the penalty for that
25 felony is a possibility of up to 20 years in prison,

1 including other possible penalties.

2 Do you understand?

3 THE DEFENDANT: I do. Yes, Your Honor.

4 THE COURT: And do you see this waiver of
5 indictment form? Can you see it if I pass it down to you?

6 THE DEFENDANT: I see that I signed it, Your Honor.

7 THE COURT: Okay. I'll pass it down. It's all
8 right. Is that your signature at the bottom?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And before you signed it, did you read
11 it carefully and discuss it with your lawyer?

12 THE DEFENDANT: I did, Your Honor.

13 THE COURT: And are you agreeing voluntarily to
14 waive your right to proceed by an indictment and consent that
15 the proceeding may be made by information rather than by
16 indictment?

17 THE DEFENDANT: I did, Your Honor.

18 THE COURT: Do you have any questions about what
19 you're doing?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: And counsel, are you satisfied that Mr.
22 Gordon's consent is knowing and voluntarily?

23 MR. ALVA: I am so satisfied.

24 THE COURT: Okay. All right. I'm sure you've
25 discussed with your lawyer what this plea proceeding is

1 about. It has several parts to it.

2 One is to make sure that you are fully competent to
3 make this decision. The second part is to make sure that you
4 fully understand the rights that you have because you'll be
5 giving them up if you plead guilty, and another part is where
6 I need to be sure you understand the possible consequences of
7 a guilty plea, and of the sentence, fine and other penalties
8 that you would face. And that you are, in fact, guilty if
9 you do in fact choose to plead guilty.

10 This proceeding is both for your benefit and for
11 mine to make sure that you understand what you're doing and
12 what rights have you have and the rights you'd be waiving.
13 It's also for mine because I can't recommend that you plead
14 guilty or that your plea be accepted if you are in fact
15 guilty and if you don't truly knowingly and voluntarily waive
16 your rights.

17 Do you understand?

18 THE DEFENDANT: I do, Your Honor.

19 THE COURT: Okay. So again, if you have any
20 questions, feel free to consult your lawyer or ask me. So
21 what is your full name?

22 THE DEFENDANT: Victor Van Gordon.

23 THE COURT: How old are you?

24 THE DEFENDANT: I'm 70.

25 THE COURT: What is the last level of school that

1 you finished?

2 THE DEFENDANT: One year of college, I guess. Or,
3 I don't -- I didn't finish that.

4 THE COURT: Okay. So high school is the last year
5 that -- the last year of schooling that you finished?

6 THE DEFENDANT: As I recollect.

7 THE COURT: Okay. Are you now or have you recently
8 been under the care of a doctor or a psychiatrist?

9 THE DEFENDANT: I'm under a doctor's care, Your
10 Honor.

11 THE COURT: Okay. And in past 24 hours, have you
12 taken any medicine or pills?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Are you under a doctor's care for any
15 illness or condition that would affect your ability to think,
16 to reason, to pay attention, to understand what's happening?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Do you feel comfortable telling me what
19 you're under the doctor's care for?

20 THE DEFENDANT: Yes, I feel comfortable.

21 THE COURT: Okay. What would that be?

22 THE DEFENDANT: I have cancer antibodies in my
23 blood and the level has gone up twice in the last two visits.

24 THE COURT: All right.

25 THE DEFENDANT: And my brother was just -- had his

1 organs cut out with cancer.

2 THE COURT: So are you receiving any treatment now
3 at this point, or just monitoring?

4 THE DEFENDANT: No. They just took x-ray scans of
5 me.

6 THE COURT: All right. In the past 24 hours, have
7 you taken any narcotic drugs?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Drunk any alcoholic beverages?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Have you ever been hospitalized for
12 drug addiction?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: For alcoholism?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: For a mental or emotional problem?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Is your mind clear now?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you understand why you're here and
21 what's happening here today?

22 THE DEFENDANT: I do, Your Honor.

23 THE COURT: All right. I'm going to ask your
24 lawyer a few questions and then come back to you. All right.
25 Have you discussed this matter fully with Mr. Gordon?

1 MR. ALVA: I have, Your Honor.

2 THE COURT: Does he understand the rights that he
3 would be waiving by pleading guilty?

4 MR. ALVA: He so appears to be. Yes.

5 THE COURT: Is he capable of understanding the
6 nature of these proceedings?

7 MR. ALVA: He is.

8 THE COURT: Do you have any doubts as to his
9 competence to plead at this time?

10 MR. ALVA: No.

11 THE COURT: Okay. Have you advised him of the
12 possible maximum and minimum sentence, fine and other
13 penalties that he faces?

14 MR. ALVA: I have.

15 THE COURT: Have you explained to him how the
16 sentencing guidelines work?

17 MR. ALVA: I have.

18 THE COURT: Have you advised him that if he's not a
19 citizen of this country, he would face deportation after he
20 serves his sentence?

21 MR. ALVA: I advised him of that fact.

22 THE COURT: Have you advised him that there's no
23 guarantee at this time what his sentence will be, or what his
24 guideline range will be?

25 MR. ALVA: Yes, I have.

1 THE COURT: Do you think he understood all of your
2 discussions?

3 MR. ALVA: Yes.

4 THE COURT: Okay. Mr. Gordon, did you hear what
5 your lawyer said?

6 THE DEFENDANT: I did, Your Honor.

7 THE COURT: And do you agree with what he said?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Have you discussed your case with him
10 fully?

11 THE DEFENDANT: I have, Your Honor.

12 THE COURT: Are you satisfied to have him represent
13 you?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you have any questions that you'd
16 like to ask him before we go any further?

17 THE DEFENDANT: Not at this point, Your Honor.

18 THE COURT: Okay. Did you fully understand the
19 charge that -- I asked you a little bit earlier about the
20 charge when you waived indictment, but do you fully
21 understand the charge against you? The smuggling charge?

22 THE DEFENDANT: I do, Your Honor.

23 THE COURT: And the forfeiture allegations?

24 THE DEFENDANT: I do, Your Honor.

25 THE COURT: And the individual acts that are

1 alleged? The acts of smuggling that are alleged in the
2 information? Superceding information?

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: Okay. All right. So let's talk about
5 your rights. These are rights that you'll give up if you
6 plead guilty.

7 Do you understand that it's your right to plead not
8 guilty if you wish to?

9 THE DEFENDANT: I do, Your Honor.

10 THE COURT: Do you understand that if you continue
11 to plead not guilty, it's your right under the Constitution
12 and laws of the United States to a speedy, public trial by
13 jury with the help of your lawyer on the charges contained in
14 the superceding information?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: Do you understand that if you cannot
17 afford to retain counsel, the Court will ensure that you have
18 appointed counsel throughout all stages of this proceeding,
19 to advise you and represent you both pre-trial, at trial and
20 on appeal if you're convicted?

21 Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And that would be at no cost to you.
24 Do you understand?

25 THE DEFENDANT: I do, Your Honor.

1 THE COURT: Do you understand that at your trial
2 you would be presumed innocent?

3 Which means that you don't have to present any
4 evidence. The government has to prove your guilt by competent
5 evidence admissible in court and persuade a jury beyond a
6 reasonable doubt of any charge against you.

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: So even if you did everything the
9 government has accused you of, if it cannot persuade a jury
10 beyond a reasonable doubt of your guilt, the jury would have
11 a duty to find you not guilty.

12 Do you understand?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. Any questions about anything so
15 far?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: During your trial, the government would
18 have to bring its witnesses to court. They would have to
19 testify in your presence.

20 Your lawyer would have the right to cross-examine
21 them, to object to the government's evidence, to present
22 evidence in your defense and to compel witnesses who you wish
23 to call to appear at trial.

24 Do you understand?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And if you decide to go to trial, you
2 would have a choice to make. It's your right to testify in
3 your defense if you wish to, but you also have a right to
4 remain silent and not to incriminate yourself.

5 Do you understand?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: So if you decide to go to trial, but
8 not to testify, Judge Matsumoto would instruct the jurors
9 that they couldn't hold against you the fact that you didn't
10 testify in your own defense.

11 Do you understand?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Any questions?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: If you plead guilty and the Court
16 accepts your guilty plea, you'll be giving up your
17 Constitutional right to a trial, the right to cross-examine
18 witnesses, to present evidence -- all the rights that I just
19 explained to you.

20 Do you understand?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: There'll be no trial of any kind, no
23 right to appeal from the judgment of guilty. The Court will
24 simply enter a judgment that says that you're guilty based on
25 what you say here today.

1 Do you understand?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And as I said earlier, before I can
4 recommend that your plea be accepted, I have to be assured
5 that you really are guilty.

6 So I'm going to ask you some questions. You'll
7 have to answer my questions and admit your guilt and when you
8 do that, you'll be giving up your right to remain silent and
9 not to incriminate yourself.

10 Do you understand?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Any questions so far?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: So Mr. Gordon, are you willing to give
15 up your right to a trial and the other rights that I've just
16 discussed?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you have a copy of the plea
19 agreement that you can follow along?

20 MR. ALVA: Yes, he does.

21 THE COURT: Okay. Great. All right. It's been
22 marked as Court Exhibit No. 1.

23 Is this the only agreement between the government
24 and the defense at this time?

25 MR. LaVERNE: Yes, it is.

1 MR. ALVA: Yes, sir.

2 THE COURT: Okay. All right. So I'm going to ask
3 you to turn to the last page. It's a signature page. My
4 copy has a signature just above your name. Did you, in fact,
5 sign this?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. And did you ask your attorney
8 any questions that you had before you signed it?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. And did you read it
11 carefully and do you think you understand all of the -- do
12 you understand the agreement?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. All right. So going back to
15 page 1. Page 1, in paragraph 1, the agreement says that
16 you'll waive indictment and plead guilty to the sole count of
17 the superceding information.

18 If you do that, you're facing a possibility of from
19 zero to 20 years in prison.

20 Do you understand?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And if you are sentenced to prison,
23 there is a possibility of supervised release.

24 Do you understand what supervised release is?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. So you could be placed on
2 supervised release for a maximum of three years after you're
3 released from prison if you're sentenced to prison. Do you
4 understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And there is a penalty for the
7 violation of a condition of supervised release, and that is
8 that you could be sentenced up to two years in prison without
9 any credit for the time you'd been in prison on supervised
10 release.

11 Do you understand?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: On the next page, there is mention of a
14 fine which is in paragraph 1(d). The maximum fine is
15 \$250,000 or twice the gross gain or loss, whichever is
16 greater. Do you understand what that means?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And you've discussed that with your
19 lawyer?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: There is a fee called a special
22 assessment of \$100 which you have to pay at the time of
23 sentencing. Are you aware of that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And then there's a criminal forfeiture

1 provision that was mentioned earlier and it's -- do you
2 understand how that works and -- or do you need more
3 explanation of that?

4 THE DEFENDANT: No. I understand it, Your Honor.

5 THE COURT: Okay. All right. Anything else do you
6 need me to mention about the penalties at this time?

7 MR. LaVERNE: No. I think it's set out in further
8 detail in the agreement. I don't think it's necessary to go
9 into further detail.

10 MR. ALVA: I'll agree.

11 THE COURT: Okay. All right. In paragraph 2,
12 there's a discussion of the sentencing guidelines. Now
13 you've already discussed the guidelines with your lawyer,
14 correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And so you understand that they're just
17 advisory guidelines? They're not firm rules. The Court has
18 to calculate your guideline range and then decide whether or
19 not to sentence you within the guidelines or above or below
20 the guidelines. Judge Matsumoto will decide what the fair
21 sentence will be in your case, and that may or may not be
22 within the guideline range. Do you understand?

23 THE DEFENDANT: I do, Your Honor.

24 THE COURT: At this time, nobody can tell you for
25 sure what your sentence will be or even what the guideline

1 range will be. Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: So if you decide to plead guilty here
4 today, you'll be doing that without knowing for sure how
5 you'll be sentenced. Do you understand?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: In paragraph 2, the government has
8 provided a guidelines estimate and I assume you've discussed
9 that with your lawyer. Is that correct?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. So I'm just going to ask
12 the government briefly to explain its estimate.

13 MR. LaVERNE: Sure, Your Honor. The bottom-line
14 estimate which assumes that the defendant successfully pleads
15 guilty today and accepts responsibility both today and prior
16 to sentence and the period leading up to sentence is a total
17 adjusted offense level of 19 and a criminal history category
18 of 1, which yields -- would yield a sentence of 30 to 37
19 months' imprisonment.

20 I'll just emphasize here again in this agreement,
21 as in most agreements that we have, the acceptance of
22 responsibility is predicated on not falsely denying or
23 contesting relevant conduct prior to sentence. So that
24 provision applies with force here as well.

25 I'll also add that there is an agreement which is

1 set out in the plea agreement that the defendant agrees that
2 his guidelines range should be calculated based on a market
3 value of at least \$400,000 and waives any right to a jury
4 trial or a Fatico hearing in connection with that issue.

5 Finally, there's an agreement by the defendant that
6 any fines collected as a result of the sentence should be
7 contributed to the African Elephant Conservation Fund.

8 THE COURT: All right. Mr. Alva, anything to add?

9 MR. ALVA: No, Your Honor. Thank you.

10 THE COURT: Okay. And Mr. Gordon, do you
11 understand what was just said?

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: Okay. Now we've talked a lot about
14 guidelines. But that's not the only basis for sentencing
15 you. Under 18 U.S.C. 3553(a) which is the statute that the
16 Court looks at, the Court must consider the guidelines, but
17 also must consider other things such as the circumstances of
18 the offense, and your background, your respect for the law,
19 what would be just punishment, deterrence, protecting the
20 public from further crimes and your need for effective
21 correctional treatment. So there are a variety of factors
22 that the Court considers in sentencing you. Do you
23 understand?

24 THE DEFENDANT: I do, Your Honor.

25 THE COURT: Okay. Now in paragraph 4, you have

1 agreed not to appeal or otherwise challenge your sentence or
2 conviction if you receive a term of imprisonment of 41 months
3 or less. That's on page 4, paragraph 4. Do you understand
4 that?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: Okay. Is there anything else in the
7 agreement that either party would like to place on the
8 record?

9 MR. LaVERNE: Not at this time, Your Honor.

10 MR. ALVA: Not at this time, sir.

11 THE COURT: Do you have any questions about the
12 plea agreement or anything else having to do with this case?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Now in federal court, we do not have
15 parole. There is something called parole in state court
16 which is early release from a sentence on what is called
17 parole. We don't have that in federal court. Do you
18 understand that?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: Okay. All right. Again, are there any
21 questions you'd like to ask me or discuss with your lawyer
22 before you go any further?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Are you ready to plead?

25 THE DEFENDANT: I am, Your Honor.

1 THE COURT: Mr. Alva, is there any reason why Mr.
2 Gordon should not plead guilty to the information?

3 MR. ALVA: I know of none, Your Honor.

4 THE COURT: Mr. Gordon, how do you plead to the
5 superceding information? Guilty or not guilty?

6 THE DEFENDANT: Guilty, Your Honor.

7 THE COURT: Are you pleading guilty voluntarily?

8 THE DEFENDANT: I am, Your Honor.

9 THE COURT: Has anyone forced you or threatened
10 you?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Has anyone made you any promises other
13 than what's in the plea agreement that induced you to plead
14 guilty?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Has anyone promised you what your
17 sentence will be?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: All right. So the charge is smuggling
20 of elephant ivory. The period alleged in the superceding
21 information is between March 2009 and April 2009. And it is
22 alleged that you committed this crime within the Eastern
23 District of New York. So can you tell me what it is that you
24 did that makes you guilty of this crime and whether, in fact,
25 this was the time period and you did do this in the Eastern

1 District?

2 MR. ALVA: With your permission, Your Honor, Mr.
3 Gordon has -- one of the things you did not cover with him
4 regarding his mental condition. He has an extremely poor
5 short-term memory.

6 THE COURT: Oh, really?

7 MR. ALVA: Yes. Very short. And he and I have
8 gone over a written allocution. With your permission, he'd
9 like to read that into the record and answer that question.

10 THE COURT: Yes. But before we do that, can you
11 tell me a little bit more about that condition and how it has
12 affected your representation and his understanding of his
13 rights?

14 MR. ALVA: How has it affected it? It's affected
15 in every way. Mr. Gordon -- it's not a matter of intention.
16 It's a matter of he simply is not capable of recalling
17 sometimes even the most basic things that happened 15 or 20
18 minutes ago. If he forgets to ask a question at the time he
19 wants to ask it, he forgets what it is.

20 THE COURT: Uh-huh.

21 MR. ALVA: His life is a compilation of Post-Its
22 which he writes and sticks everywhere.

23 THE COURT: Uh-huh.

24 MR. ALVA: And then an hour later, forgets why he
25 wrote it. So it -- everything in the plea agreement and the

1 superceding information were read by me to him line by line.
2 We went over sentence by sentence while it was still fresh in
3 his recollection. So it has made me a more thorough attorney
4 for that purpose and in our -- we are both traveling from
5 Philadelphia for these proceedings. A large majority of the
6 conversations were done at his store in Philadelphia.

7 THE COURT: Uh-huh.

8 MR. ALVA: So in the two hours plus that it takes
9 us to come here, we go over things again and again as to his
10 memory, his understanding. While his memory as to certain
11 details wavers at times, his admission of guilt is uniformly
12 consistent, his contrition absolute and with his help, he and
13 I put together the statement that he would like to read to
14 the Court. If you have any other questions, ask him directly
15 and he'll answer them.

16 THE COURT: Well, just as to his condition, how are
17 you sure that he fully understands his rights and all of the
18 questions that I posed earlier and the answers that he gave
19 me?

20 MR. ALVA: Because rather than just say to him, as
21 I would anyone else, do you understand what's just been said
22 to you, I ask him to explain immediately after giving it to
23 him, and he's given back to me in layman's language
24 information that makes me believe and know that he understood
25 what I said.

1 THE COURT: Uh-huh.

2 MR. ALVA: And questions that you asked of him are
3 questions that I'm quite familiar with in my practice of 40
4 years and I anticipated them and we went over those
5 specifically and told him the areas of questions that you may
6 ask and the specific questions that I thought you would ask
7 and he gave answers to me consistent with the full
8 understanding of the discussions.

9 THE COURT: Uh-huh. Was there ever a time when you
10 thought he did not understand the questions or the -- first
11 of all, that he did not understand what he was charged with?

12 MR. ALVA: In the beginning. Absolutely.

13 THE COURT: Uh-huh.

14 MR. ALVA: There was a lack of understanding, and
15 it may have been more than a lack of understanding. It may
16 have been a lack of appreciation. And there was a lack of
17 appreciation and then there came understanding, and with
18 understanding came contrition and continued understanding.

19 I would be less than candid with you if I told you
20 that from the time of the search to the time of today, this
21 has not been a journey to get him to this point to understand
22 what exactly he was involved in and that while he himself did
23 none of the smuggling, he facilitated the smuggling by the
24 people that he dealt with who did the smuggling and explained
25 to him that type of conspiracy and explained to him why that

1 is against the law, despite what he intended to do with the
2 ivory, that that's all part of the crime and through that
3 process, with the government's patience, we have brought
4 ourselves to this day.

5 THE COURT: And are you saying that the information
6 necessary to allocute today and to fully understand that to
7 which he is allocuting transferred from the short-term memory
8 which was difficult for him to understand and retain, to a
9 longer-term memory which he has been able to retain?

10 MR. ALVA: No. What I'm saying is is that his
11 allocution and his admitting these crimes has been explained
12 to him. We've gone over the answers and we've taken those
13 answers and we've written them down immediately --

14 THE COURT: Uh-huh.

15 MR. ALVA: -- so they could be preserved so that
16 when it came time to this point and he was asked these
17 questions by you, rather than I forget exactly what I wanted
18 to say about that, we'd put it down --

19 THE COURT: Uh-huh.

20 MR. ALVA: -- in writing as a guarantee that
21 (a) you would understand that he understands what he's
22 pleading guilty to, and (b) he could put forth what he wanted
23 to say at the time when he admitted to these crimes.

24 THE COURT: Uh-huh. Mr. Gordon, do you have
25 anything to add?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Is Mr. Gordon under treatment for his
3 condition?

4 MR. ALVA: He's not under treatment. He was
5 examined fully. I have a full psychiatric report which I
6 will attach to the -- my pre-sentence (inaudible) to the Court
7 which I (inaudible). But he's not being actively treated for
8 it now.

9 THE COURT: And does he have a diagnosis?

10 MR. ALVA: Honestly, I think he does. I don't
11 recall it. I don't have the report with me at this moment.

12 May I have a moment?

13 THE COURT: Sure.

14 MR. ALVA: It was submitted to the government.

15 (Counsel confer.)

16 MR. LaVERNE: I can't recall if there was a
17 diagnosis or not, to be honest with you. I didn't seem to
18 me, I know upon reading it, to call into question in any way
19 his competency to proceed, his understanding of the criminal
20 charges and his ability to proceed here at sentence.

21 I would -- and I would just ask that Your Honor as
22 I'm sure you will, just confirm with Mr. Gordon that he has
23 understood everything that's happened here today, has
24 retained it, understands it, understands the fact that he
25 committed a crime, recalls that. I think we got into this

1 whole line here by way of explaining why the allocution was
2 written as opposed to spoken.

3 And it's my experience it's not an unusual practice to
4 have a written allocution, so that the defendant doesn't miss
5 anything. Not all of us are tremendous extemporaneous
6 speakers, so I'll leave it there and turn it back over to
7 Your Honor.

8 THE COURT: No. But I think his condition is very
9 relevant to this proceeding and I'm glad you brought it up
10 because it would have been incomplete without it. All right.
11 So why don't we hear the allocution and then I'll proceed
12 from there?

13 MR. ALVA: Okay.

14 THE DEFENDANT: I, Victor Gordon, make the
15 following statement in furtherance of my plea of guilty. I
16 fully understand the English language. I am not under the
17 influence of drugs or alcohol. I am not now or ever have
18 been committed to a mental institution. I have read the
19 superceding information charging me with several federal
20 offenses. My attorney Daniel Paul Alva has explained to me
21 these charges, the elements contained therein as well as any
22 possible defenses.

23 After a thorough review of the charges, the
24 evidence, *etcetera*, it is my desire to enter a plea of guilty
25 to these charges and put this chapter in my life behind me.

1 No one has threatened me, promised me anything beyond what is
2 set out in the plea agreement. The factual basis for my plea
3 is as follows.

4 I come from a family of collectors, auctioneers,
5 merchants of various antiques and other items, and my mother
6 was an artist, all of which created a great interest within
7 me for arts and antiques.

8 Over the years, my interest in African art grew to
9 the point that I devoted a large part of my life and my
10 income to the collection and preservation of such items.
11 I've been collecting African elephant ivory for many years
12 before the embargo and in my interest in said ivory -- and my
13 interest in said ivory was known throughout the trade.

14 In the early '80s, I decided that my art collection
15 was of such nature and quality that it could become the basis
16 for a museum dedicated to the beauty of African art. The
17 dream shaped the next 30 years of my life and ultimately
18 brought me to this day.

19 Throughout these years and certainly throughout the
20 period of information -- of the information made, 2006
21 through October 25, 2009, I collected ivory for the purpose
22 of the museum. When I wasn't working in my store, I was
23 trying to interest various government and private
24 institutions and concerns with the prospect for an African
25 art museum.

1 The ivory in question, while significant in its
2 amount, is actually -- actually formed a very small part of
3 my overall collection. As I received many positive responses
4 in my proposals, I began to turn a blind eye to the
5 provenance of the ivory I was purchasing.

6 I knew that it was illegal to purchase and sell
7 post-embargo ivory, yet I continued to buy same without
8 properly researching its age or origin. I fooled myself into
9 thinking that since my goal was noble, my actions were
10 lawful. I know I was wrong and I stand before you in
11 disgrace.

12 The overwhelming majority of the ivory I bought was
13 stored in my basement -- in the basement of my property for
14 the museum. Only a few minor ivory items were on display in
15 my store and only the items -- and the only items that I sold
16 were considered by myself as not being museum quality. I
17 have read -- oh. Well before the time of the search, I had
18 withdrawn all of the ivory from display.

19 I have read the list of ivory that was seized by
20 the government from various buyers to whom I had sold them
21 and I admit these were obtained by me in violation of the law
22 and agree that they are subject to forfeiture.

23 The items found in the basement of my store were
24 also subject to forfeiture for the same reasons. Although I
25 had some pieces of pre-embargo ivory, my lack of proper

1 records was such that I realized I could not prove their
2 provenance and thus agree to their forfeiture as well.

3 After the search of my store, the seizures therein
4 and in speaking with my attorney, I realize the gravamen of
5 my actions and the wrong-headedness of my dreams, my
6 contrition was such that I voluntarily surrendered numerous
7 pieces of ivory to the United States Attorneys Office on
8 October 15, 2010.

9 These items had been overlooked by the agents
10 during the search of my business. I also agree that these
11 items are forfeitable for the same reasons as stated above.

12 Therefore, I admit the following. That inasmuch as
13 I knowingly purchased the ivory that was post-embargo and in
14 violation of the African Elephant Conservation Act,
15 Title 16, United States Code Section 4223 *et seq.*, that I did
16 receive the ivory knowing that it had been imported contrary
17 to law. That specifically between March and April 2009, I
18 purchased ivory that I knew had been imported into the United
19 States contrary to law under Title 18, United States Code
20 Section 982(a), 2(b) and Title 18, United States Code Section
21 545 that I received on various dates and listed in my guilty
22 plea agreement are forfeitable under the law and I hereby
23 agree to said forfeiture. That in accordance with my plea
24 agreement, I agree to pay the money judgment of \$150,000.

25 THE COURT: All right. Mr. Gordon, do you

1 understand everything that happened here today?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. And do you recall the
4 questions that I asked you and the answers that you gave?

5 THE DEFENDANT: Most of them. Some of them.

6 THE COURT: Did you --

7 THE DEFENDANT: I understood them all as you gave
8 them to me and I answered them all according to Your Honor.

9 THE COURT: All right. How long have you had a
10 memory problem?

11 THE DEFENDANT: A long, long time. I can't tell
12 you how many years.

13 THE COURT: But years?

14 THE DEFENDANT: Oh, yes.

15 THE COURT: Many years?

16 THE DEFENDANT: I have -- even when they came into
17 my place, I must have had two or 300 notes on my desk.
18 Little notes. As long as I can remember, I have to write
19 notes to myself.

20 THE COURT: Uh-huh. And are you satisfied --

21 THE DEFENDANT: I still function.

22 THE COURT: -- right. No. I just want to be sure
23 that you understand fully what you're doing here because
24 you're giving up very important rights.

25 THE DEFENDANT: I understand, Your Honor.

1 THE COURT: Okay. And you have discussed with your
2 lawyer -- well, have you understood everything that your
3 lawyer has said to you throughout his representation?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And do you remember your lawyer
6 explaining the process that he went through in making sure
7 that you understood that you had committed a crime and in
8 making sure that you understood what you were doing here
9 today in preparing for this?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And do you agree with everything that
12 he said?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: I understand from what you just read
15 that when you were importing ivory, you knew at some point
16 that it was illegal to do that. Is that correct?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And that you, as you said, deluded
19 yourself or fooled yourself into thinking that because your
20 purpose was noble, that it was not a violation of the law.
21 Is that correct?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And did you understand that there --
24 well, did you -- in importing that ivory into the United
25 States, did you in fact make an effort to conceal the fact

1 that you were bringing ivory into the country?

2 MR. ALVA: That is not the case, Your Honor. Mr.
3 Gordon didn't actually have any involvement in the
4 importation, the smuggling, the hiding, *et cetera*. But as
5 the ultimate buyer of the ivory that others were importing
6 and smuggling the ivory, (inaudible) knew that African ivory
7 is not domestic and that it had to have been brought.

8 THE COURT: Is that correct?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And did you know the people that
11 supplied you with the ivory were doing so illegally?

12 THE DEFENDANT: Can I consult with my attorney,
13 Your Honor?

14 THE COURT: Sure.

15 (Counsel and the defendant confer.)

16 THE DEFENDANT: I should have known it, Your Honor.

17 THE COURT: You knew it was -- did you know it was
18 illegal to bring African ivory into the United States?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And did you know that the ivory that
21 you purchased and received came from Africa?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. And did you know that the
24 ivory that you purchased and received came from Africa after
25 the embargo on African ivory was in effect?

1 THE DEFENDANT: I grew to find that out, Your
2 Honor.

3 (Counsel and the defendant confer.)

4 MR. ALVA: Your Honor --

5 THE COURT: You learned that at some point?

6 MR. ALVA: Is that the case? Did you learn at some
7 point --

8 THE DEFENDANT: Yes.

9 MR. ALVA: -- that that had come in post-embargo?

10 THE DEFENDANT: Yes.

11 THE COURT: And did you learn that -- and did you
12 continue to purchase African ivory after you learned that it
13 was post-embargo?

14 MR. ALVA: May it please the Court, when I refer to
15 the process of (inaudible) that process. Mr. Gordon, when he
16 gave you his allocution, indicated that even the pre-embargo
17 pieces that he possessed -- he had no records with him
18 whatsoever.

19 THE COURT: Right. I know.

20 MR. ALVA: He kept no records and as such, he -- I
21 think that -- and I think the government would agree with
22 me -- that anyone who deals in ivory today, they have a duty.

23 They have a duty of researching the provenance of
24 such ivory to make sure that it is, in fact, pre-embargo
25 ivory, that they cannot just willingly turn a blind eye to a

1 statement, oh, it's fine. It's old. That was what Mr.
2 Gordon did. He turned a willful blind eye. Never researched
3 provenance. Never took any steps beyond the statements that
4 were made.

5 In the very end, right before -- irony of ironies,
6 right before his store was raided, he for the first time
7 actually refused to take ivory from someone because at that
8 point, he was convinced something wasn't right. This must be
9 new. The goods were left anyway. The police came right in.

10 So it was a process for Mr. Gordon to realize for
11 the last two years that you can't run a business like you ran
12 despite what your goals are and especially when you're
13 dealing with African ivory and just not ask any questions,
14 not research history. Because without that, it's got to be
15 new ivory.

16 And in fact, the ivory was tested by the government
17 and it was new ivory. So he came to find out that he
18 understands what he did was wrong and he understands that by
19 being the ultimate buyer, he aided in the importation of it.

20 MR. LaVERNE: Your Honor, if I may. First of all,
21 the government takes a different position and this may end up
22 being hashed out at sentencing if we get there as to the
23 defendant's role in the importation of ivory.

24 And I would proffer that we have witness testimony
25 and other evidence which would show that the defendant was

1 actually actively involved in bringing the ivory into the
2 United States.

3 Leaving that aside for now, I think for today's
4 purposes in order for Mr. Gordon to successfully allocute, we
5 need him to allocute at the very least to a willful blindness
6 theory on this crime.

7 And I have the Second Circuit's approved
8 instruction on that in front of me here and I would like the
9 defendant to allocute here today that he deliberately closed
10 his eyes to what otherwise would have been obvious to him in
11 terms of the illegality of the ivory that he was purchasing
12 and receiving. That he acted with conscious purpose to avoid
13 learning the truth about that ivory, and that he was aware of
14 a high probability that this ivory that he was receiving had
15 been brought into the country illegally.

16 I think we need that from the defendant, at a
17 minimum, in order to have a successful allocution here today.

18 THE COURT: Would you like to ask those questions
19 slowly and individually?

20 MR. LaVERNE: So I'll ask whether or not the
21 defendant acknowledges that in receiving elephant ivory in
22 the period March 2009 to April 2009 that he deliberately
23 closed his eyes to learning the provenance of that ivory and
24 to learning that it was, in fact, brought into the country
25 illegally.

1 THE COURT: Do you understand the question?

2 THE DEFENDANT: I do, Your Honor. And everything
3 he just said, I'll answer yes to.

4 THE COURT: All right. That is true? Okay.

5 MR. LaVERNE: I'd actually like him just to put on
6 the record that it's true.

7 THE COURT: Yes.

8 MR. LaVERNE: What I just said.

9 THE COURT: Yes. That it's true. Is that correct?
10 Is it true?

11 THE DEFENDANT: Yes, Your Honor.

12 MR. LaVERNE: And I'll also ask whether the
13 defendant acknowledges that he acted with a conscious purpose
14 to avoid learning the truth about that ivory that he received
15 and seeking out the provenance of it and the fact that it was
16 imported illegally into the country.

17 THE COURT: Is that true?

18 THE DEFENDANT: Yes, Your Honor.

19 MR. LaVERNE: And finally, I'll ask the defendant
20 to confirm that he was aware of a high probability that that
21 ivory that we're dealing with in this information had been
22 imported into the United States contrary to law.

23 THE COURT: Is that true?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And in answering each of these

1 questions, are you basing your answer on your recollection of
2 what happened?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And are you satisfied that your
5 recollection is accurate?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right.

8 MR. LaVERNE: The government would also proffer
9 that the ivory in question here was imported through John F.
10 Kennedy International Airport. I'd ask the defense to
11 stipulate to that fact here today.

12 MR. ALVA: So stipulated.

13 THE COURT: Is there anything else the government
14 believes it ought to place on the record at this time?

15 MR. LaVERNE: No. I think we've covered the
16 elements in the allocution.

17 THE COURT: Mr. Alva, anything else you'd like to
18 add?

19 MR. ALVA: No, Your Honor.

20 THE COURT: Mr. Gordon?

21 THE DEFENDANT: No, Your Honor. But I'd like to
22 ask my attorney a question.

23 THE COURT: Go ahead.

24 (Counsel and the defendant confer.)

25 MR. ALVA: Thank you, Your Honor.

1 THE COURT: Go ahead. All right. Let's start with
2 the basics here. I find that Mr. Gordon is acting
3 voluntarily, that he fully understands the rights that he
4 has, the charges against him, the rights he's giving up by
5 pleading guilty, the consequences of a guilty plea, including
6 the possible sentence, fine and other penalties.

7 And you do understand that if you're -- I think I
8 asked this question several times, but I just want to ask it
9 again -- you understand that if you're not a citizen of this
10 country that you could be deported. Is that correct?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand that there's no
13 guarantee what your sentence will be?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And I find that there's a factual basis
16 for the plea. I also find that although Mr. Gordon does have
17 a problem with his memory, that he has demonstrated here both
18 through his own statements and through the statements of his
19 attorney that he fully understands everything that has
20 happened here in this proceeding, that his statements here
21 are based on his knowledge and his memory, and that he fully
22 comprehends all of these proceedings.

23 In addition, I find that he -- that Mr. Gordon did
24 in fact commit the crime that is alleged. That based on
25 his -- again, his knowledge and his recollection as described

1 both through his own words and through his attorney's
2 statements, that Mr. Gordon was in fact aware at the time
3 that he committed the acts that he described, that he was
4 willfully turning a blind eye to the fact that the ivory that
5 he was purchasing had been -- was likely -- that there was a
6 high probability that that ivory had a provenance of -- an
7 illegal provenance from Africa and was in fact what has been
8 termed to be new ivory that was brought in after the embargo
9 was imposed.

10 So I find that he did in fact violate provisions of
11 the statute alleged in the superceding information.

12 Is there anything else that any of the parties
13 would like to add at this point?

14 MR. LaVERNE: I would just -- I'm not sure we
15 covered this, but I would proffer that the government would
16 show that the ivory in question was in fact ivory that had
17 been brought in illegally and was the conditions under which
18 it had to be brought in legally were not complied with. I
19 take it there's no objection from the defense on that?

20 MR. ALVA: No. None whatsoever.

21 THE COURT: Right. And again, Mr. Gordon, do you
22 understand what was just said?

23 THE DEFENDANT: No. Actually, I didn't understand
24 what he just said.

25 THE COURT: Okay. Would you like to explain that

1 one more time?

2 MR. LaVERNE: The government -- if we went to
3 trial, the government would prove that the ivory that Mr.
4 Gordon received was in fact brought in illegally by someone.
5 That the process in which it was brought into the country did
6 not comply with the law and I just take it that there's --
7 I'd just ask the defendant to stipulate that that's the case
8 under the circumstances that Your Honor has outlined already.

9 THE DEFENDANT: Now I understand it.

10 THE COURT: All right. Do you understand?

11 THE DEFENDANT: Yes.

12 THE COURT: And your lawyer has said that you
13 stipulate or agree. Are you in agreement with that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. Anything else?

16 MR. LaVERNE: No, Your Honor.

17 MR. ALVA: No, Your Honor.

18 THE COURT: All right. Thank you.

19 MR. LaVERNE: Thank you very much. Appreciate your
20 patience.

21 MR. ALVA: If Your Honor pleases, my client after
22 that, there's another issue which my client has asked me to
23 bring to your attention.

24 THE COURT: Okay.

25 MR. ALVA: I think I know the answer, but he asked

1 me to bring it to your attention. As I indicated to you
2 earlier, he lives in the Philadelphia area, has his business
3 in Philadelphia. He's on pre-trial release and he's
4 monitored by Philadelphia authorities.

5 He'd like to know whether or not Probation of
6 Philadelphia can interview him and do all of the pre-sentence
7 investigation, or whether or not he must come back to fair
8 Brooklyn for that process.

9 THE COURT: You know, I don't have any control over
10 that and what I would suggest is that you contact the
11 Probation Department here and ask them if they would allow
12 the pre-sentence investigation report to be conducted out of
13 Philadelphia. I don't know whether they do that.

14 My guess is that they don't, but because I think we
15 do a very, very thorough pre-sentence investigation report
16 and I believe it would be to your advantage to have as much
17 information placed in that report as possible. It will help
18 Judge Matsumoto in determining what sentence to give you.
19 Anyway, so bottom line is --

20 MR. ALVA: We'll ask.

21 THE COURT: -- ask. Ask.

22 MR. ALVA: Thank you.

23 THE COURT: Okay. And we do have a sentencing
24 date?

25 THE CLERK: Yes. Sentencing will occur on

1 April 23rd, 2013 at 11 a.m. before Judge Matsumoto.

2 MR. ALVA: Thank you very much.

3 MR. LaVERNE: Thank you, Your Honor.

4 THE DEFENDANT: Thank you, Your Honor.

5 THE COURT: I have some documents for the
6 government.

7 MR. ALVA: We're off the record? 11 am.

8 THE COURT: We're off the record.

9 (Proceedings concluded at 4:56 p.m.)

10 I, CHRISTINE FIORE, court-approved transcriber and
11 certified electronic reporter and transcriber, certify that
12 the foregoing is a correct transcript from the official
13 electronic sound recording of the proceedings in the above-
14 entitled matter.

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17 _____ October 27, 2012

18 Christine Fiore, CERT
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